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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,613	11/21/2003	Jason Matthew English	KCC 4947 (K-C 18, 027)	3131

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EXAMINER	
BOGART, MICHAEL G	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/719,613	ENGLISH ET AL.	
	Examiner	Art Unit	
	Michael G. Bogart	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-55* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/26/04; 1/24/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 51 objected to because of the following informalities:

Separate "41" from "wherein". Appropriate correction is required.

Claim Rejections – 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-55 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Present claim 1 relates to a product defined by reference to desirable characteristics or properties defined by the use of parameters, namely the saturation capacity, the retention capacity and the intake time for a first insult. The claims cover all products having this characteristic or property, whereas the application provides enablement within the meaning of 35 USC § 112 first paragraph for only a very limited number of such products. In the present case, the claims so lack support, and the application so lacks disclosure, that a meaningful search over the whole of the claimed scope is impossible.

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-55 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-55 lack clarity because applicants attempt to define the product by reference to a result to be achieved. Again, this lack of clarity in the present case is such as to render a meaningful search over the whole of the claimed scope impossible. Consequently, the search has been carried out for those parts of the claims which are clearly defined, supported and disclosed, namely those parts relating to the products characterized by the composition (i.e. basis weight, percentage of superabsorbent material and density) of the absorbent structure as claimed in claims 2-4, 9-21, 24, 26-29, 31-36 and 41-51.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

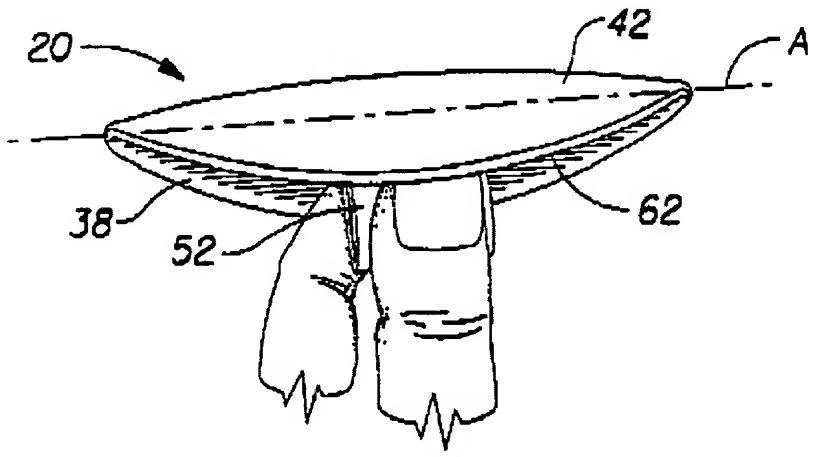
> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-18, 21-33, 36-48 and 51-55 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bewick-Sonntag *et al.* (US 2003/0191442 A1).

Bewick-Sonntag *et al.* disclose the claimed invention except for the specifically claimed test results and various parameters including length, density and thickness. Although the reference might inherently achieve the test results, this Office has no means for determining whether this is the case (see figure 4, below)(paragraphs 0110-0115, 0309 and 0310).



Generally, differences in test characteristics or parameters such as size, or density will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such test characteristic is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or

workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977).

Regarding claims 1, 7, 22-24, 25, 30, 39-41, 54 and 55, the benefits of optimizing saturation capacity and/or retention capacity, intake time and rewet would have been known prior to applying a test, making these values result-effective variables. One of ordinary skill in the art would have recognized that increasing capacity and/or retention, intake time and rewet performance would allow the absorbent article to larger fluid insults or fluid insults of longer duration and avoidance of rewet when the article is in use.

Regarding claims 5, 6, 37, 38, 52 and 53, the benefits of optimizing the gel stiffness or resistance of the article to deformation while under load would have been known to one of ordinary skill in the art prior to applying the gel stiffness index test. One of ordinary skill in the art would have recognized the increasing the article's resistance to deformation underload would result in less leakage after a fluid insult while an absorbent article is being worn.

Regarding claims 2-4, 8-16, 18, 26-29, 31 and 42-46, the benefits of optimizing the weight % of superabsorbent, the density and/or basis weight of the absorbent structure, the length and thickness of the absorbent structure would have been known to one of ordinary skill in the art. This is because human females upon which such absorbent articles are placed very considerably in size and weight and have variable flow conditions, all of which will require optimization in terms of the size of the absorbent article and the amount of absorbent material that must be packed into that article. Other factors that would come into play would be overall article flexibility and materials cost.

Regarding claims 17, 32 and 47, Bewick-Sonntag *et al.* teach an absorbent article (20) comprising a permeable topsheet (42) and an impermeable backsheet (38) enveloping an absorbent core (44)(figure 4).

Regarding claims 21, 36 and 51, Bewick-Sonntag *et al.* teach an absorbent structure that is of unitary construction (one piece).

Regarding claims 33 and 48, Bewick-Sonntag *et al.* teach an absorbent article (20) having a predetermined axis of flexure (X)(see figure 4, supra).

Claims 19, 20, 34, 35, 49 and 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bewick-Sonntag *et al.* as applied to claims 1-18, 21-33, 36-48 and 51-55 above, and further in view of Bewick-Sonntag *et al.* (US 5,836,929 A)(herein after '929).

Bewick-Sonntag *et al.* do not expressly disclose an absorbent structure comprising a homogeneous mixture of hydrophilic fibers and superabsorbent.

'929 teaches an absorbent article having an absorbent core made from a blend of hydrophilic fibers and superabsorbent (claim 10). This provides favorable loft and absorption characteristics.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use '929's absorbent core construction in the labial pad of Bewick-Sonntag *et al.* in order to provide good absorptive ability.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Bogart
29 September 2005

TATYANA ZALUKAEVA
PRIMARY EXAMINER